



STATE OF NEW YORK
DEPARTMENT OF HEALTH
P.O. Box 11729
Albany, NY 12211

Notice of Decision

Decision Date: October 15, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000002715

[REDACTED]

Dear [REDACTED],

On June 24, 2015 you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's February 18, 2015 enrollment notice and April 10, 2015 eligibility determination.

The enclosed Decision, rendered after that hearing, is issued by the Appeals Unit of NY State of Health.

If you have questions about your Decision, you can contact us by:

- Calling the Customer Service Center at 1-855-355-5777
- Sending Mail to:
NY State of Health Appeals
P.O. Box 11729
Albany, NY 12211
- Sending a Fax to 1-855-900-5557

When contacting NY State of Health about your appeal and/or the Decision, please refer to the Appeal Identification Number at the top of this notice.

Legal Authority

We are sending you this notice in accordance with federal regulation 45 CFR § 155.545(b).

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Issues

The issues presented for review by the Appeals Unit of NY State of Health are:

Did the Marketplace properly determine that your child was eligible to enroll in Child Health Plus at full cost, effective April 1, 2015?

Did the Marketplace properly determine that your child was eligible to enroll in Child Health Plus with a \$9.00 monthly premium, effective May 1, 2015?

Procedural History

On February 2, 2014, the Marketplace issued an eligibility determination stating that your daughter would be eligible to enroll in health insurance through Child Health Plus at full cost. Because she had previously been eligible to enroll in employer sponsored health insurance, she would not be eligible to enroll in Child Health Plus until March 1, 2014.

Your Marketplace account indicates that your daughter was enrolled in a plan through Child Health plus effective April 1, 2014 through March 31, 2015; however, no confirmation of enrollment for that initial enrollment is in your account.

On February 13, 2015, the Marketplace sent you a notice stating that it was time to renew your child's health insurance for 2015. The notice further stated that your child qualified for health care coverage in a full-price Child Health Plus plan, effective April 1, 2015 and that, if the information on your application is still accurate, your child would be re-enrolled in Child Health Plus with Fidelis Care,

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beginning April 1, 2015. The notice stated that any changes to your child's account or plan must be made between February 16, 2015 and March 15, 2015, for any such changes to be effective April 1, 2015.

On February 18, 2015, the Marketplace issued a notice confirming your child's Child Health Plus enrollment with Fidelis Care with a monthly premium responsibility of \$158.46, effective "as early as April 1, 2014" (*sic*).

No updates were made to your account by March 15, 2015.

On April 9, 2015, information in your Marketplace account was updated.

On April 10, 2015, the Marketplace issued a notice of eligibility determination stating that your child was eligible to enroll through Child Health Plus with a \$9.00 monthly premium, effective May 1, 2015. This determination was based on an expected household income of \$42,000.00.

On May 4, 2015, you spoke with the Marketplace's Account Review Unit and appealed the April 10, 2015 determination insofar as it began your child's Child Health Plus \$9.00 premium eligibility on May 1, 2015, and not April 1, 2015.

On June 24, 2015, you had a telephone hearing with a Hearing Officer from the Appeals Unit of NY State of Health. The record was developed during the hearing and closed at the end of the hearing.

Findings of Fact

A review of the record supports the following findings of fact:

- 1) The record reflects that you expect to file your 2015 federal income tax return jointly with your spouse and claim your child as a dependent.
- 2) You testified, and the record reflects, that you initially applied for health insurance through the Marketplace with the assistance of an application counselor. The record further reflects that, as of February 2, 2014, you chose to receive all information from New York State of Health electronically. You testified that you were not aware that the option for electronic communications was selected for your account.
- 3) The Marketplace's system reflects that your child was enrolled in Child Health Plus (CHP) through Fidelis Care effective April 1, 2014 to March 31, 2015. You testified that you paid \$60.00 per month for your child's CHP premium throughout this coverage year.

- 4) According to the February 13, 2015 renewal notice, if no changes were made to your account before March 15, 2015, your child would be automatically renewed in the same CHP plan through Fidelis at full cost, effective April 1, 2015. You confirmed that you elected automatic renewal for your child's health insurance coverage and, therefore, did not update her CHP coverage for the following year.
- 5) You testified that you did not receive the February 13, 2015 renewal notice.
- 6) You testified that you did not receive any notices from the Marketplace prior to your appeal request. You further testified that you have not received any email notifications or alerts from the Marketplace. You testified that the only notices you received regarding your child's CHP coverage were the billing statements issued by the health plan provider.
- 7) You testified that your expected household income changed in January 2015 but you did not notify the Marketplace of this change until April 9, 2015.
- 8) You testified that your child's CHP premium increased from \$60.00 per month to \$158.46 per month, beginning April 2015.
- 9) The Marketplace's system reflects that your child is currently enrolled in CHP through Fidelis Care effective April 1, 2015.
- 10) The record reflects that your Marketplace account was updated on April 9, 2015 to reflect an expected household income of \$42,000.00 for the 2015 tax year. The record further reflects that your child's CHP eligibility for a \$9.00 monthly premium began as of May 1, 2015.
- 11) You are requesting that your child's \$60.00 CHP premium remain in effect for the month of April 2015.

Conflicting evidence, if any, was considered and found to be less credible than the evidence noted above.

Applicable Law and Regulations

Child Health Plus

A child may be eligible for coverage through Child Health Plus (CHP) provided (1) he or she lives in a household having a household income at or below 400% of the federal poverty level (FPL) and (2) is not eligible for medical assistance (Medicaid), except that a child who becomes eligible for Medicaid after becoming

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eligible for CHP, may be eligible for a subsidy payment for a period of three months after becoming eligible for such medical assistance (NY Public Health Law § 2511(2)(b) and (3)).

The “period of eligibility” for CHP is “that period commencing on the first day of the month during which a child is an eligible child and enrolled or recertified for enrollment on an annual basis based on all required information and documentation and ending on the last day of the twelfth month following such date,” unless the CHP premiums are not timely paid or child no longer resides in New York State, gains access to or obtains other health insurance coverage, or becomes eligible for Medicaid (NY Public Health Law [PHL] § 2510(6)).

The amount of the premium payment, if any, that must be made on behalf of a child who enrolls in CHP depends upon the child’s family household income (PHL § 2510(9)(d)). No payments are required for eligible children whose family household income is less than 160% of the FPL. If the family household income is between 160% and 400%, premiums range from \$9.00 per month to \$60.00 per month (PHL § 2510(9)(d)).

The CHP premium is \$9.00 per month for a child whose family household income is between 160% and 222% of the FPL (PHL § 2510(9)(d)(ii)).

For a CHP eligibility determination, the 2015 FPL for a three-person household is \$20,090.00 (80 Fed. Reg. 3236, 3237).

In New York State, CHP benefits are furnished “By the first day of the month after the application is received if prior to the 15th of the month or the first day after the subsequent month if after the 15th of the month” (Selection made on Form CS 18, Separate Child Health Insurance Program Non-Financial Eligibility – Citizenship. Sections: 2105(c)(9) and 2107(e)(1)(J) of the SSA and 42 CFR 457.320(b)(6), (c) and (d)).

Annual Eligibility Redetermination

Generally, the Marketplace must conduct annual eligibility redeterminations for qualified individuals who are seeking financial assistance through insurance affordability programs for the upcoming year, such as tax credits and cost-sharing reductions, Medicaid, or CHP. In such cases, the Marketplace is required to request that the qualified individual provide updated income and family size information for use in an eligibility redetermination for the upcoming year (see 45 CFR § 155.335(a) and (b)).

The Marketplace must provide an individual with the annual redetermination notice, including the projected eligibility for coverage and financial assistance, and must require the qualified individual to report any changes within 30 days (45 CFR § 155.335(c), (e)). Once the 30-day period has lapsed, the Marketplace

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must issue a redetermination as provided by the notice, with consideration given to any updates provided by the individual (45 CFR § 155.335(h), and ensure that any redetermination is effective on the first day of the coverage year (45 CFR § 155.335 (i)).

Electronic Notice

The Marketplace must permit individuals a choice to receive notices and information in electronic format or by regular mail and must be permitted to change such election (45 CFR § 155.230(d); 42 CFR § 435.918(a)).

If the individual elects electronic communications, the Marketplace must send “an email or other electronic communication alerting the individual that a notice has been posted to his or her account” and send a notice by regulation mail within three business days if the electronic communication cannot be delivered (42 CFR § 435.918(b)(4), (5)).

Legal Analysis

The first issue under review is whether the Marketplace properly determined that your child was eligible for Child Health Plus (CHP) at full cost, effective April 1, 2015.

The Marketplace must redetermine a qualified individual’s eligibility for health insurance and financial assistance to help pay for that health insurance annually, and must timely issue a renewal notice providing the projected eligibility determination for the following year. If an individual does not respond to this notice, the Marketplace must issue an eligibility determination for the upcoming coverage year based on the information contained in the renewal notice.

On February 13, 2015, the Marketplace issued an annual eligibility redetermination notice stating that, if no changes were made to your account before March 15, 2015, your child would be automatically re-enrolled in her current CHP plan through Fidelis Care at full cost. This enrollment was confirmed in a notice issued on February 18, 2015, which indicated a CHP premium responsibility of \$158.46 per month.

The record reflects that your account was not updated by March 15, 2015, and you further testified that you did not attempt to update your child’s account during the renewal period because you opted for automatic renewals. Therefore, the Marketplace was required to redetermine your child’s CHP eligibility based on the information contained in the annual renewal notice. Since the renewal notice stated that your child would be automatically re-enrolled in the same CHP plan through Fidelis Care at full cost, and your account was not updated by March 15,

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2015, your child was properly re-enrolled in the CHP plan through Fidelis at full cost with a \$158.46 monthly premium as of April 1, 2015.

The February 18, 2015 enrollment confirmation notice is therefore AFFIRMED.

The second issue is whether the Marketplace properly determined that your child was eligible for CHP with a \$9.00 monthly premium, effective May 1, 2015.

The amount of your child's CHP premium is calculated based on a three-person household consisting of you, your spouse, and your child.

At the hearing, you testified that your expected income changed in January 2015 but you did not notify the Marketplace of this change until April 9, 2015. According to the April 9, 2015 application, you expect a household income of \$42,000.00 for the 2015 tax year.

A household income of \$42,000.00 is 209.06% of the 2015 federal poverty level (FPL) for a three-person household. Since your income is between 160% and 222% of the FPL, your child was correctly determined eligible for a CHP premium payment of \$9.00 per month.

In New York, if a CHP application is submitted before the 15th of the month, then the CHP benefits begin on the first day of the following month.

Since your child's CHP application was submitted on April 9, 2015, the Marketplace properly began her new CHP eligibility on the first day of the following month, which was May 1, 2015.

However, you credibly testified that you did not receive the February 13, 2015 renewal notice regarding your child's eligibility and re-enrollment in a full cost CHP plan, effective April 1, 2015. You further testified that you did not receive any correspondence from the Marketplace that your child was re-enrolled in a CHP plan through Fidelis Care with a \$158.46 monthly premium.

Since according to your account you elected to receive communications from the Marketplace electronically, the Marketplace was required to post notices to your electronic account within one business day of notice generation. It was also required to send an email or other electronic communication alerting you that a notice had been posted to your account.

If the electronic communication failed, the Marketplace was required to send a notice by regular mail within three business days of the date of the failed electronic communication if the electronic communication was undeliverable.

The record does not contain any evidence on behalf of the Marketplace as to whether the electronic communications were undeliverable. The record also does

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not contain evidence that the notices were sent by regular mail within three business days of the date of a failed electronic communication. Without evidence on behalf of the Marketplace, it must be presumed that you were not given proper notice of the actions planned or contemplated by the Marketplace.

When you became aware that your account needed to be updated, you updated the information in your account.

It is reasonable to infer that had you been aware that updates needed to be made to your account reflecting any changes in your household income in a timely fashion, you would have been found eligible for a CHP premium amount of \$9.00 per month, effective April 1, 2015.

Therefore, the April 10, 2015 eligibility determination is MODIFIED to state that your child was eligible to enroll through Child Health Plus with a \$9.00 premium per month, effective April 1, 2015.

Decision

The February 18, 2015 enrollment confirmation notice is AFFIRMED.

The April 10, 2015 eligibility determination notice is MODIFIED to state that your child was eligible to enroll through Child Health Plus with a \$9.00 premium per month, effective April 1, 2015.

Effective Date of this Decision: October 15, 2015

How this Decision Affects Your Eligibility

Your child is eligible to enroll through Child Health Plus with a \$9.00 premium per month, effective April 1, 2015.

Your child remains enrolled through Child Health Plus with Fidelis Care, effective April 1, 2015.

If You Disagree with this Decision (Appeal Rights)

This Decision is final unless you submit an appeal request to U.S. Department of Health and Human Services or bring a lawsuit under New York Civil Practice Law and Rules, Article 78.

You may bring a lawsuit on any Appeals Unit decision in New York State court in accordance with Article 78 of the New York Civil Practice Law and Rules. This

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must be done within four months after the date of the Decision Date, which appears on the first page of this Decision.

Additionally, Appeals Unit decisions on issues involving eligibility for qualified health plans, advance premium tax credits, and cost-sharing reductions may be appealed to the U.S. Department of Health and Human Services. This must be done within 30 days of the date of the Decision Date, which appears on the first page of this Decision (45 CFR § 155.520(c)).

If you wish to be represented by an attorney in bringing an outside appeal and do not know how to go about getting one, you may contact legal resources available to you. You may, for example, contact the local County Bar Association, Legal Aid, or Legal Services.

If You Have Questions about this Decision (Customer Service Resources):

You can contact us in any of the following ways:

- By calling the Customer Service Center at 1-855-355-5777
- By mail at:
NY State of Health Appeals
P.O. Box 11729
Albany, NY 12211
- By fax: 1-855-900-5557

Summary

The February 18, 2015 enrollment confirmation notice is **AFFIRMED**.

The April 10, 2015 eligibility determination notice is **MODIFIED** to state that your child was eligible to enroll to enroll through Child Health Plus with a \$9.00 premium per month, effective April 1, 2015.

Your child is eligible to enroll through Child Health Plus with a \$9.00 premium per month, effective April 1, 2015.

Your child remains enrolled through Child Health Plus with Fidelis Care, effective April 1, 2015.

Legal Authority

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A Copy of this Decision Has Been Provided To:

